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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST
COMPANY AMERICAS (FKA
BANKERS TRUST COMPANY) AND
JP MORGAN CHASE BANK IN THEIR
SEPARATE CAPACITIES AND AS
AGENTS FOR THE PRE AND POST-
PETITION LENDERS OF FLEMING
COMPANIES, INC.; DOES 1 TO 200,

Defendants.

) CASE NO. CV 07-00172 SOM-LEK

)

) The Hon. Judge Susan Oki Mollway

)

) **DECLARATION OF ERIN N.**

)

) **BRADY IN SUPPORT OF**

)

) **DEFENDANTS' SUPPLEMENTAL**

)

) **BRIEFING IN RESPONSE TO THE**

)

) **COURT'S ORDER CONTINUING**

)

) **HEARING ON DEFENDANTS'**

)

) **MOTION TO DISMISS AND**

)

) **PLAINTIFF'S COUNTER-MOTION**

)

) **FOR PARTIAL SUMMARY**

)

) **JUDGMENT**

)

DECLARATION OF ERIN N. BRADY IN SUPPORT OF DEFENDANTS'
AUGUST 6, 2007 SUPPLEMENTAL BRIEFING

I, ERIN N. BRADY, declare as follows:

1. I am an attorney at the law firm of Kirkland & Ellis LLP, attorneys for Defendants, and am duly authorized to make this declaration. I am licensed to practice law in the State of California. I know the following to be true through my work in this case, and if requested could and would competently testify as such.

2. Attached hereto as Exhibit AA is a true and correct copy of Plaintiff Wayne Berry's Concise Statement filed in this action on July 5, 2007.

3. Attached hereto as Exhibit BB is a true and correct copy of Plaintiff's Supplemental Disclosures Regarding Damages filed in the first lawsuit¹ on October 23, 2002.

4. Attached hereto as Exhibit CC is a true and correct copy of Plaintiff's Final Pretrial Statement filed in the first lawsuit on January 7, 2003.

5. Attached hereto as Exhibit DD is a true and correct copy of Plaintiff's Comprehensive Witness List filed in the first lawsuit on February 4, 2003.

6. Attached hereto as Exhibit EE is a true and correct copy of excerpts from the March 5, 2003 trial transcript in the first lawsuit.

7. Attached hereto as Exhibit FF is a true and correct copy of an exhibit admitted into evidence at trial in the first lawsuit that supports a claim of continuing infringement.

8. Attached hereto as Exhibit GG is a true and correct copy of Plaintiff's Motion for entry of Permanent Injunction lodged in the first lawsuit on March 19, 2003.

¹ As used herein, the "first lawsuit" refers to *Berry v. Fleming Companies, Inc.*, Civ. No. 01-00446 SPK LEK.

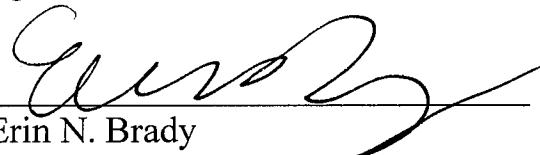
9. Attached hereto as Exhibit HH is a true and correct copy of Plaintiff's July 19, 2007 response to this Court's July 17, 2007 order in above-captioned lawsuit.

10. Attached hereto as Exhibit II is a true and correct copy of an email from Timothy Hogan to Damian Capozzola dated May 2, 2003 regarding his theory for suing Defendants for copyright infringement.

11. Attached hereto as Exhibit JJ is a true and correct copy of the Second Amended Verified Complaint filed in *Berry v. Hawaiian Express Service, Inc.*, Civ. No. 03-00385 SOM-LEK, dated June 18, 2004.

12. Attached hereto as Exhibit KK is a copy of the Order Granting Plaintiff Relief from Automatic Stay entered in *In re Fleming Companies, Inc. et al.*, Case No. 03-10945 (MFW) on July 26, 2004.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California, on August 6, 2007.


Erin N. Brady